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HOUSE BILL 273 By
Buck

SENATE BILL 567
By Gilbert

AN ACT to amend Tennessee Code Annotated, Section 34-11-113, relative to payments by fiduciary.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 34-11-113, is amended by inserting the following new subsections immediately after subsection (a) and renumbering existing subsection accordingly:

(b) The fiduciary may also pay such other amounts from the property of the minor or disabled person that (i) are incurred by the fiduciary in good faith on behalf of the minor or disabled person, (ii) are intended to benefit or protect the minor or disabled person or his or her property, whether or not an actual benefit or protection is ultimately in fact attained and (iii) do not materially compromise the minor or disabled person's standard of care. Payments shall be deemed to be incurred on behalf of the minor or disabled person even if they are made to the guardian or such payments personally benefit the guardian so long as the expenditure is used to change the physical surroundings of the minor or disabled person in a manner intended to allow the guardian to provide better care for the minor or disabled person. Any expense which complies with each of the requirements of this subsection shall be presumed to be reasonable and in the best interest of the minor or the disabled person upon the fiduciary's filing of a

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sworn statement to that effect with the annual accounting for the year in which the expense was incurred unless a guardian ad litem appointed at the discretion of the court to review such expenditure proves by a preponderance of evidence that such expense fails to comply with each of the requirements of the subsection.

(c) All other expenses, including those that are proved not to comply with the requirements of subsection (b), may be approved by the court, either prior to or after their payment, upon a determination that (i) they are reasonable and (ii) they protected or benefited the minor or disabled person or his or her property, or (iii) that their payment is in the best interest of the minor or disabled person.

(d) For purposes of subsection (b), an expense shall not be construed to materially compromise a minor or disabled person's standard of care if (i) it does not exceed the minor or disabled person's annual income less his or her annual expenses for the year in which it is incurred; (ii) its payment does not compromise the minor or disabled person's access to adequate health care and necessities; and (iii) its payment does not compromise the ability of the minor's or disabled person's estate to resolve foreseeable contingencies or future basic needs of the minor or disabled person.

(e) For purposes of subsection (a), attorneys' fees shall include fees for preparing attorney fee applications and other related filings that are required to be submitted to the court including petitions to secure approval or reimbursement for any expenses paid by the fiduciary which meet the requirements of subsections (b)(i) and (b)(ii), provided that the amount of such fees are determined by the court to be reasonable in view of the services rendered.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all appropriate expenditures incurred for the benefit of a

minor or disabled person relative to guardianships created before, on or after such effective date.